UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

July 18, 2024

[redacted content]

Robin Purdy, Superintendent
Bennett School District 29J
615 7th St., Bennett, CO 80102

Sent via email to: [redacted content]

Re: OCR Case Number 08-24-1230 – [redacted content]/Bennett School District 29J

Dear [redacted content] and Superintendent Purdy:

This letter is to notify you of the disposition of the above-referenced complaint against [redacted content] (School) and Bennett School District 29J (District), which the United States Department of Education (Department), Office for Civil Rights (OCR) received on January 26, 2024. The Complainant alleges that the School is discriminating against national origin minority students on the basis of limited English proficiency. Specifically, the Complainant alleges the School is failing to: a) identify and assess English learner (EL) students in need of language assistance in a timely, valid, and reliable manner; b) provide ELs with a language assistance program that is educationally sound and proven successful; c) sufficiently staff and support the language assistance program for ELs with the services necessary to participate meaningfully in the School's educational program; and d) ensure that parents' decisions to opt out of the language assistance program are knowing, voluntary, and appropriately documented.

OCR conducted this investigation under Title VI of the Civil Rights Act of 1964 (Title VI), and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities operated by a recipient of federal financial assistance from the Department. The District and School receive funds from the Department and therefore must comply with Title VI and its regulations.

I. Summary of OCR's Investigation and Findings

Based on OCR's careful review of District and School records and interviews of 11 School and District employees, OCR found by a preponderance of the evidence that the District and School failed to comply with Title VI and its implementing regulations during school year (SY) 2023-24 for the following reasons:

1. The School failed to timely and reliably identify and assess some EL students, timely place identified students in an English Language Development (ELD) program, and

consistently notify parents in a language they could understand of their student's identification as an EL, placement in an EL program, and right to opt out of the program;
2. The School lacks adequate and appropriate resources, including an ELD curriculum and instructional materials, to implement its chosen ELD program effectively;
3. The School lacks enough qualified teachers to implement its ELD program and provide all identified EL students with ELD instruction and lacks trained administrators to evaluate teachers who provide ELD program services; and
4. The School has not ensured that parent decisions to opt their students out of the School's ELD program are knowing and voluntary, provided parents with complete information regarding withdrawal in a language they can understand; and accurately documented parent withdrawals.

OCR's investigation also identified the following compliance concerns where the School may not be: sheltering or scaffolding instruction to allow EL students to participate fully in the core curriculum; monitoring the academic progress of all former EL students to determine if they have overcome their language barriers and are able to participate in the standard instructional program comparable to their non-EL peers; ensuring that teachers notify parents of essential information about the School's programs and activities called to the attention of non-limited English proficient (LEP) parents in a language the parent with LEP understands; and meeting its record-keeping obligations under Title VI.

The District and School enter into the enclosed resolution agreement (Agreement) to address the violations and compliance concerns OCR identified in its investigation. This letter explains the applicable legal standards and OCR's investigative findings, legal analysis, and conclusions. When fully implemented, the Agreement will resolve the violations and compliance concerns identified by OCR.

II. Background

[redacted content]. The School served approximately 370 students during SY 2023-24.

III. Legal Standards

In reaching its findings of fact and legal conclusions detailed below, OCR applied the following general legal standards under Title VI.

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d-1. The Title VI regulation at 34 C.F.R. § 100.3(a) mirrors the statutory mandate. The Title VI regulation at 34 C.F.R. § 100.3(b)(1) specifies prohibited discriminatory actions including, among others, that a recipient may not (a) deny an individual any service or other benefit of its programs on the basis of race, color, or national origin; or (b) provide different services or other benefits or provide them in a different manner from that provided to others in similar circumstances on the basis of race, color, or national origin. The Title VI regulation at 34 C.F.R. § 100.3(b)(2) provides that, in determining the types of services, benefits, or facilities that

will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand English excludes national origin minority students from effective participation in a recipient school district's program, the district must take affirmative steps to ensure that the EL students can meaningfully participate in the district's programs to effectuate Title VI's nondiscrimination mandate. In reaching this determination, the Supreme Court relied on the Title VI regulations, including all of those cited above, stating: "It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations." *Id.* at 568. Subsequent to *Lau*, the federal Ninth Circuit Court of Appeals, confirmed that Title VI requires a state education agency (SEA), and by extension local education agencies (LEAs), "to ensure that needs of students with limited English language proficiency are addressed." *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69, 71 (9th Cir. 1981).

OCR has long interpreted Title VI to require that recipient public school districts meet the legal standards established in the case of *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), as part of taking the requisite affirmative steps to ensure that EL students can meaningfully participate in their education programs. OCR has notified the Department's recipients repeatedly since 1985 that it applies *Castañeda*'s standards when assessing if a recipient has complied with the Title VI obligation to provide EL students with meaningful access to its programs. Those standards include this three-prong test:

1. Does the school district provide an ELD program that has an underlying educational theory recognized as sound by experts in the field of ELD education or considered a legitimate experimental strategy?
2. Are the programs and practices used by the school district reasonably calculated to implement the educational theory underlying the district's ELD program effectively? In other words, does the district follow through with practices, resources, and personnel necessary to transform the theory underlying its chosen ELD program(s) into reality?
3. Does the district evaluate the effectiveness of its ELD program after a legitimate trial and do its results indicate that EL students' language barriers are actually being overcome within a reasonable period of time?

648 F.2d 989, 1009-10.

A. Identifying EL Students, Placing them in ELD Programs, and Notifying Their Parents

Consistent with case law, OCR has long interpreted Title VI to require that public elementary and secondary schools (recipients) must accurately and timely identify students with a primary or home language other than English (PHLOTEs) and determine if they are EL students through a valid and reliable assessment of English proficiency to ensure that ELs are identified and have

their language needs addressed. *See Gomez v. Ill. State Bd. of Educ.*, 811 F.2d 1030, 1033-34, 1044-45 (7th Cir. 1987) (relying on *Idaho Migrant Council v. Bd. of Educ.*, 647 F.2d 69, 71 (9th Cir. 1981), and holding that a recipient SEA's alleged failure to ensure that recipient schools identify EL students with objective and adequate tests to ensure their needs are addressed stated viable claims under Title VI and the Equal Education Opportunities Act (EEOA)); *Rios v. Read,* 480 F. Supp. 14, 23 (E.D.N.Y. 1978) (requiring school district to use "objective validated tests conducted by competent personnel" to identify EL students under Title VI and the EEOA); *Cintron v. Brentwood,* 455 F. Supp. 57, 64 (E.D.N.Y. 1978) (requiring school district to use "validated" tests of English proficiency under Title VI and the EEOA).

OCR interprets the Title VI duty to timely identify EL students consistent with related requirements of the Elementary and Secondary Education Act (ESEA), which the Department administers. These requirements include, among others, that LEAs using Title I or Title III funds for services to EL students notify parents of identified EL students of the reasons their child was identified as an EL, the child's level of English language proficiency (ELP) and how the level was assessed; the method of instruction used in the ELD program in which the child is or will be placed; the methods of instruction used in other available ELD programs; the parent's right to decline enrollment in the ELD program or withdraw their child from the ELD program upon request, or to choose another ELD program if available. ESEA § 1112(e)(3). This notice must be provided within 30 calendar days after the start of the school year or within the first two weeks of placing an EL student in an ELD program for students who enroll after the school year starts. ESEA §§ 1112(e)(3)(A), 1112(e)(3)(B). The notice and information provided must be provided in a language the parents can understand to the extent practicable. *Id.* § 1112(e)(4).

OCR interprets these ESEA parental notification requirements consistent with the Department's longstanding interpretation that Title VI requires meaningful communications of school activities to parents with LEP in a language they understand. *See* 35 Fed. Reg. 11595 (July 18, 1970). Therefore, if a written translation of the parental notice is not practicable, recipients must provide this notice to parents with LEP using free oral interpretation to ensure their children's ability to participate meaningfully in the recipient's programs.

B. Language Assistance Services for EL Students

Recipients must provide EL students with language assistance services that are educationally sound in theory and effective in practice until they are proficient in English and can participate meaningfully in the recipient's educational programs without language assistance services. *See Castañeda*, 648 F.2d at 1009-10. ELD programs must be designed and reasonably calculated to enable EL students to attain both English proficiency and parity of participation in the standard instructional program within a reasonable length of time. *Id.* at 1010. To ensure that an EL student is placed in an educationally sound ELD program that is reasonably calculated to attain both goals within a reasonable period of time, each EL's ELP (e.g., basic or advanced), grade level, educational background (e.g., students with identified disabilities or students with limited or interrupted formal education (SLIFE)), and language background for bilingual programs (e.g., EL students must be Spanish proficient for placement in bilingual Spanish programs), must be considered to determine which ELD program services are appropriate for the student.

Under prong two of *Castañeda,* OCR evaluates if the recipient schools have the personnel,

practices, and resources needed to transform the theory underlying their chosen ELD program(s) into reality. *See Castañeda,* 648 F.2d at 1010. First, recipients must have an adequate number of teachers who are qualified to provide the language assistance services of the schools' ELD programs. *Id.* at 1013 (holding that "qualified teachers are a critical component of the success of a language remediation program"). Where formal teacher qualifications have been established by the SEA (e.g., the SEA requires an English as a Second Language (ESL) certification to teach in ESL programs), recipients must either hire teachers who already have the necessary formal qualifications to teach EL students or require that teachers already on staff be trained or work towards attaining those qualifications and obtain them within a reasonable period of time. *See id.* at 1005, 1013. In some instances, however, SEA endorsements or other requirements may not be rigorous enough to ensure that teachers of EL students have the skills necessary to carry out the school's chosen ELD program. *See id.* (determining noncompliance because some district teachers of bilingual classes were not qualified to teach them despite having completed the state's teacher preparation program). Paraprofessionals, aides, or tutors may not take the place of qualified teachers and may be used only as an interim measure while a recipient hires, trains, or otherwise secures enough qualified teachers to serve its EL students. *See id.*

Recipients that provide ELD teacher training are also responsible for evaluating if their training adequately prepares teachers to implement the ELD program effectively. *See id.* (directing the state and district to develop an improved in-service training program and adequate evaluation process to ensure that teachers completing the program were qualified to teach bilingual classes). To meet this obligation, recipients need to ensure that administrators who evaluate the ELD program staff are adequately trained to meaningfully evaluate whether ELD teachers are appropriately employing the training in the classroom and are adequately prepared to provide the instruction that will ensure that the ELD program model successfully achieves its educational objectives. *See Rios*, 480 F. Supp. at 18, 23-24 (finding a violation, in part, because the district administrator who evaluated bilingual teachers lacked the skills and training to evaluate them).

Regarding resources under *Castañeda*'s second prong, recipients must have adequate and appropriate instructional materials to effectively implement their chosen ELD program(s). In this investigation, this means having adequate quantities of ELD materials available at the appropriate ELP and grade level to meet the language needs of EL students in the ELD pull-out component of the School's ELD program. *See Castañeda* 648 F.2d at 1010 (requiring adequate resources to implement ELD programs); *see also Lau*, 414 U.S. at 566 (finding no equality of treatment under Title VI when a district uses the same curriculum and materials for EL and non-EL students because the former cannot comprehend them and meet graduation requirements).

C. ELs Who are Opted Out of ELD Services

To provide EL students with a meaningful opportunity to participate in a school's programs, the school must provide them with specialized instruction designed to overcome their language barriers through an educationally sound ELD program. *See Lau*, 414 U.S. at 566; *Castañeda*, 648 F.2d at 1009. Parents may waive their child's right to ELD program services under Title VI, but this decision must be informed and voluntary. *See, e.g., Town of Newton v. Rumery*, 480 U.S. 386, 393 (1987) (any waiver of statutory right of action must "be the product of an informed and

voluntary decision"); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974) (waiver must be "voluntary and knowing"). Recipients may not recommend that parents decline all or some services within an ELD program because this puts pressure on the parent to waive their child's right to ELD program services. For parents to understand their right to waive such services, information about the program services being offered needs to be in a language the parents can understand to ensure that any waiver is knowing and voluntary. Appropriate documentation of a parent's opt-out decision is important to support schools' assertions and for OCR to evaluate schools' legal compliance.

If parents opt their child out of an ELD program or specific ELD services, the child retains his or her status as an EL, and the recipient remains obligated to take the affirmative steps required by Title VI to provide these national-origin minority EL students access to its educational programs, otherwise it will continue to deny meaningful access based on national origin in violation of Title VI. To ensure that all EL students have meaningful access to a recipient's programs, recipients must periodically monitor the progress of students who have opted out of ELD programs or certain EL services. If an EL who opted out of a recipient's ELD programs or services does not demonstrate expected growth in English proficiency or struggles in one or more subjects due to language barriers, the recipient's affirmative steps under Title VI include informing the EL student's parent of his or her lack of progress and re-offering ELD services to the student. If a recipient's monitoring of an opt-out EL shows the student is struggling but the student's parent continues to decline the ELD program or services, the recipient should take affirmative and appropriate steps to meet its Title VI obligation.

Consistent with this civil rights obligation, the ESEA requires the Department's recipients to annually assess the ELP of opted-out EL students to gauge their progress in attaining English proficiency and to determine if they are still in need of and legally entitled to ELD services and related Title I and Title III funding under the ESEA.

D. Monitoring and Exiting EL Students

Recipients must monitor the progress of their EL students in achieving ELP and acquiring content knowledge using valid and reliable tests to ensure that EL students are able to meet the dual goals of the EDL program discussed in *Castañeda* – acquisition of English and parity of participation in the standard instructional program within a reasonable period of time. *See Castañeda*, 648 F.2d at 1014 ("Valid testing of student's progress in these areas is, we believe, essential to measure the adequacy of a language remediation program."). Monitoring ensures that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the ELD program. Recipients should establish rigorous monitoring systems that include benchmarks for expected growth in English proficiency and acquiring academic content knowledge during the academic year and take appropriate steps to assist students who are not adequately progressing towards those goals. The 1970 Memorandum that the Supreme Court relied upon in *Lau* notified recipients that they may not operate ELD programs like dead-end tracks and must exit students from these programs when their language needs are met as soon as possible. 35 Fed. Reg. 11595 (July 18, 1970).

After students have exited an EL program, recipients must monitor the academic progress of former EL students for a period of time to ensure that they have not been prematurely exited, any

academic deficits they incurred as a result of participation in the ELD program have been remedied, and they are meaningfully participating in the standard instructional program comparable to their never-EL peers. OCR interprets exit criteria and this monitoring period under Title VI consistent with the Department's ESEA requirements governing its recipients, which require standardized exit criteria using valid and reliable tests of ELP and four years of monitoring EL students' academic achievement after they have achieved ELP on the test. *See* ESEA §§ 3113(b)(2), 3121(a)(5).

E. Meaningful Communication with Parents with Limited English Proficiency

Consistent with the longstanding interpretation of Title VI in the 1970 Memorandum, recipients have an obligation to adequately notify parents with LEP of information about any program, service, or activity of a recipient that is called to the attention of non-LEP parents by meaningfully communicating the information in a language parents understand. 35 Fed. Reg. 11595 (July 18, 1970). The 1970 Memorandum recognized that the nondiscrimination mandate of Title VI could not be effectuated with respect to national-origin minority students unless their parents receive information about the recipient's programs and activities in a language the parents understand. In the absence of such information, EL students are effectively excluded and denied the ability to participate in the recipient's programs on the basis of national origin in violation of the Title VI regulations whether those programs are ELD programs, special education programs, gifted and talented programs, career and technical education programs, magnet programs, pre-K programs, or extracurricular activities. Meaningful access to these programs also requires that the recipient's collection of information from parents that is needed to participate in these programs be translated or interpreted. For example, if the permission slip for a school field trip or the school's request for consent to evaluate a child for a disability are issued only in English, a parent with LEP may not understand the requested permission and their child will be denied the chance to participate in the trip or be evaluated for special education.

To ensure compliance with Title VI and its regulations, OCR assesses whether the Department's recipients are providing parents with LEP comparable access to information that is provided to parents in English about school programs and activities by using qualified interpreters and translators to communicate this information. This essential information includes language assistance programs, special education and related services, individualized education program (IEP) team meetings, grievance procedures, notices of nondiscrimination, student discipline policies and procedures, registration and enrollment, report cards, requests for parent permission for student participation in school activities, parent-teacher conferences, parent handbooks, gifted and talented programs, and any other school and program choice options. *See, e.g., H.P. v. Board of Educ. of the City of Chicago,* 385 F. Supp. 3d 623, 638 (N.D. Ill. 2019) (denying school district's motion to dismiss plaintiff's Title VI claim in a case seeking district translation of IEPs and other special education documents and adequate interpretation at IEP meetings for parents with LEP); *T.R. v. Sch. Dist. of Philadelphia,* 223 F. Supp. 3d 321, 333-35 (E.D. Pa. 2016).

To ensure national-origin minority students are not excluded from participation in recipient programs and activities in violation of Title VI, recipients must have a process for identifying parents with LEP and what their language needs are. Recipients must provide language assistance to parents with LEP effectively with appropriate and competent interpreters and translators who are either on staff or from outside resources. To ensure comparable access to the

information brought to the attention of English-proficient parents, recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue. In addition, recipients should ensure that interpreters and translators are trained on the role of an interpreter and translator, the ethics of interpreting and translating, and the need to maintain confidentiality. Recipients may not rely on or ask students, siblings, friends, or untrained school staff to translate or interpret for parents with LEP.

F. Record-Keeping

The regulation implementing Title VI, at 34 C.F.R. § 100.6(b), requires recipients to keep and submit timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as OCR may determine to be necessary to ascertain the recipient's compliance with Title VI. In a Title VI investigation, like this one, such records include complete and accurate records of parent notification and consent, home language surveys, WIDA screener and ACCESS scores, ELD placement, and monitoring of reclassified students, which are necessary for OCR to ascertain whether the District and School are meeting their legal obligations to EL students.

IV. Findings of Fact and Analysis

Below OCR sets forth its factual findings regarding the School's ELD program based on the evidence obtained from multiple witnesses, documents, and data. The preponderance of that evidence analyzed under the general legal standards above establishes that the School failed to take the affirmative steps needed to: consistently identify all EL students in a timely way; provide them with the ELD program services required by its chosen program model with the staff, materials, and curriculum needed to implement that model effectively; and ensure that parents' decisions to opt their child out of EL services was knowing and voluntary. OCR found compliance concerns in other areas.

A. Failure to Timely Identify and Place EL Students in the School's ELD Program and Notify their Parents of their Placement

As explained below, OCR found that the School does not have a consistent and reliable process to ensure that all PHLOTE students are timely identified and assessed, which resulted in some students who lack English proficiency not being screened and other students who are proficient in English being incorrectly identified as an EL. OCR also found that the School did not place some identified EL students in an ELD program in a timely manner. OCR further found that the School cannot establish that it consistently and timely notified parents regarding their students' identification and placement in the School's ELD program in a language they can understand because of a lack of documentation.

The School uses a student data information system called [redacted content], and the District uses Infinite Campus (IC) to house student data and report to the Colorado Department of Education (CDE). The two data systems are incompatible and do not exchange information in an automated manner, and none of the School employees have access to IC.

[redacted content] English Learners Manual (EL Manual) states that all families will be given a home language questionnaire (HLQ) as part of the online enrollment process in an [redacted content] school. [redacted content] HLQ for Colorado schools includes six questions that are provided in both English and Spanish that ask parents to identify: a) the student's first spoken language; b) any other language the student speaks or understands; and c) the extent to which the student speaks, understands, and uses both languages by selecting one of five options (i.e., only the other language and no English, other language more often than English, other language and English equally, English more often than the other language, and only English). The HLQ also asks in what language the parent prefers to receive school notices and letters.

The EL Manual additionally states that if a parent indicates on the HLQ that a language other than English is present in the home, the EL screening process commences by assessing the student with an initial language proficiency assessment (i.e., the WIDA screener in Colorado). A diagram in Appendix D to the EL Manual states that if a language other than English is indicated on the HLQ, the registrar notifies the EL Coordinator, who determines if the other language is meaningful to the student. If yes, the EL Coordinator administers the screener within 30 days of the start of school or 10 days of enrollment. If no, the EL Coordinator corrects the HLQ and the information in [redacted content] regarding home language to reflect the finding. Thus, according to the diagram, identification of a language other than English on the HLQ does not necessarily result in ELP testing.

The School's [redacted content] contract with the District states that the School "shall follow the District's procedures for identifying, assessing, monitoring and exiting English learners." The District's process is to screen all students who identify a language other than English anywhere on the home language survey. The District's EL Coordinator told OCR that she is unfamiliar with the School's HLQ and identification process but plans to take over data compilation and scoring of the WIDA screener next school year because of concerns about the School's process during SY 2023-24.

Based on a spreadsheet provided to OCR, of the 362 students in the School during SY 2023-24, 145 students indicated on the HLQ that a language other than English is spoken in the home; 106 of the 145 students were assessed using the WIDA screener as of April 12, 2024. 27 of the 39 students who were not assessed have been enrolled in the School since August 2023, and 9 of the 39 students not assessed have IEPs.

Of the 39 students not assessed, 9 of the students have a language other than English (i.e., Spanish, Amharic, Russian) identified in the "EL identifying language" column of the spreadsheet, 18 have a response of "English more often than the other language" in that column, 11 have a response of "Other language and English equally," and one has no response. It is not clear to OCR from the HLQs reviewed and witness interviews how the School made determinations as to what response to include in the "EL identifying language column," particularly when the responses to the HLQ questions differ (e.g., a parent answered "mostly English" for some questions but identified another language and/or answered "other language and English equally" for other questions).

All the School's ELD teachers told OCR that they are unaware of any written policy or guidance on determining which PHLOTE students to assess, and they all provided different explanations as to what answers on the HLQ require ELP assessment. For example, ELD Teacher 3 told OCR that if a student indicates a second language or responds, "another language and English equally," the student gets assessed, but students who respond "English more often than other language" are not assessed. ELD Teacher 1 told OCR that if a student answers, "English more often than other language," she would call the parents or ask the classroom teacher about the home language, and not take notes of the conversations. ELD Teacher 1 also told OCR that she was instructed by the School's former principal, Principal 1, to assess all kindergarten students regardless of their responses on the HLQ. ELD Teacher 2 told OCR that she was not given any guidance or training on who to assess, but her understanding is that any student who answers something other than English on the HLQ should be assessed. ELD Teacher 2 also provided OCR with a note in which she asked a classroom teacher which students needed to be assessed for ELD services.

Teacher 1 told OCR that she had concerns there were students in her class who could potentially qualify for ELD services but had not been identified. One day, she was so frustrated with the seemingly arbitrary pulling of students for ELD services that she asked students to raise their hands if they speak another language at home. Student 1 who had been at the School since the start of SY 2023-24 but had not been screened perhaps because his HLQ response is "English more often than other language," spoke up and said that he does not understand why he is not receiving ELD services. Student 1 was screened on March 22, 2024, and found eligible for ELD services as a LEP student.

Another student, Student 2, was given the WIDA screener although her parent answered "English only" to all five questions on the HLQ and was found eligible for ELD services as Not English Proficient (NEP) based on an overall proficiency score of 2.5. None of the witnesses interviewed were able to explain why Student 2 scored so low on the WIDA screener if she does not speak another language at home. When Student 2 took the ACCESS test in January 2024, she scored proficient in English with a score of 4.8 overall and 4.3 in literacy.

The data reviewed by OCR also demonstrates significant delays in the School's ELP assessment process. Of the 106 students who were assessed, only 2 students were assessed within 30 days of the start of the school year or 10 days of their enrollment in the School. For at least 24 ELs, more than 45 days elapsed between their start date at the School and their screener test, and for some the delay was several months long. For example, Student 4 started at the School on August 9, 2023, but was not given the WIDA screener until April 2, 2024, despite her parents' identification of another language [redacted content] in the HLQ.

The spreadsheet provided to OCR also indicates delays between the administration of the WIDA assessment and the initiation of ELD services and a failure to place some eligible EL students in the ELD program. There are at least 22 students who waited approximately one month between when the screener was administered and the determination that they are an EL student. For example, Student 5 enrolled in the School on August 9, 2023, was assessed on September 13, 2023, and determined Not English Proficient (NEP) on October 17, 2023. There are another eight students who were assessed and determined to lack proficiency in English but are not listed

in [redacted content] or IC as being in the School's ELD program. And, there is one student with an IEP, Student 6, who was determined proficient in English and therefore not eligible for ELD services although his overall score on the WIDA kindergarten screener was 1.

The EL Manual states that parents must be notified of their child's participation in an ELD program within 30 days of enrollment at the beginning of the school year and within 10 days of enrollment during the school year, and that [redacted content] provides state specific notification letters in English, Spanish, French, and when necessary, additional languages. ELD Teacher 3 told OCR that she prints a form letter from [redacted content] website in whatever language is listed on [redacted content] as the preferred language for the parents but does not retain a copy of the letter for the student's cumulative (cum) file. ELD Teacher 1 told OCR that she sent home parent notification letters in the Fall of 2023 but could not recall if she retained a copy. There were no notification letters from ELD Teachers 1 and 3 in the student files that OCR reviewed. Thus, OCR was unable to confirm whether those teachers timely sent notification letters to all parents of students found eligible for ELD services in a language the parents could understand.

ELD Teacher 2 told OCR that she was unaware of any [redacted content] form letter for parent notification and created her own form letter to send to the parents of all the EL students assigned to her. She sent out approximately 50 letters in December 2023 in English only. ELD Teacher 2 also told OCR that she assumed all the parents of her students speak English because she had no newcomers in her group, and that she did not know where in [redacted content] to look for the parents' preferred language. Based on the spreadsheet and schedules provided to OCR, there are at least seven students who were assigned to ELD Teacher 2 whose parents indicated that their preferred language of communication is Spanish.

ELD Teacher 2 provided to OCR a sample of the notification letters that she sent to parents. The sample letter, which is dated December 18, 2023, is for Student 7, who enrolled in the School on September 11, 2023, and was screened by ELD Teacher 2 on December 14, 2023. Based on WIDA kindergarten screener scores of 3 in listening, 6 in speaking, and 5 in overall proficiency, Student 7 was determined by the School to be proficient in English. Nevertheless, ELD Teacher 2 sent Student 7's parent a letter informing her that Student 7 was scheduled to receive 90 minutes per week (45 minutes two times per week) of pull-out ELD instruction "at her specific level to match her needs" and would be taking the ACCESS test in January 2024, which she did and scored 1.3 overall and 1.0 in literacy raising concerns about the accuracy of the student's results on the screener. The letter additionally states that the parent has a right to opt-out of the ELD program and includes a copy of the Parent Opt-out Waiver form. The letter does not explain why the student was identified as an EL, provide the student's proficiency level, or the methods of instruction that will be used in the ELD program. OCR was unable to ascertain whether the parents who received notification letters from ELD Teacher 2 in December 2023 previously received notification letters from their former teacher, ELD Teacher 1, because of the lack of documentation in students' cum files and IC regarding parent notification.

B. Failure to Provide EL Students with an ELD Curriculum and Instructional Materials to Implement the School's ELD Program

As detailed below, OCR found that the School lacks adequate resources to implement its ELD program because there is no ELD curriculum or instructional materials to ensure the promotion

of ELD across the four language domains.

The EL Manual states that all [redacted content] schools are required to provide EL students with ELD programming that focuses on the development of listening, speaking, reading, and writing skills in a small group and Sheltered English Instruction (SEI) in core classes. The EL Manual summarizes some research on second language acquisition that should "impact instruction and instructional strategies utilized in classrooms" across [redacted content] schools but does not identify a particular ELD curriculum that should be used by network schools. Instead, the EL Manual states that [redacted content] schools "use a tailored suite of curriculum to deliver content and help students meet state standards."

The School's [redacted content] contract states that the School shall use the District's ELD programming model to ensure that ELs are given meaningful access to grade level content, acquire proficiency in English, and achieve grade level standards. The District's EL Coordinator told OCR she does not know what ELD program or curricular materials the School uses. All the School witnesses told OCR that the School does not have an ELD curriculum. The ELD teachers work with ELs on the curriculum in their core classes and scaffold the instruction to the students' proficiency levels. For example, the ELD teachers provide early access to vocabulary that will be used in the general education classroom and additional time to work on reading and writing responses.

ELD Teacher 2 told OCR that the only curricular materials she was given by the School was a three-ring binder with a checklist of tasks related to administration of the ELD program and a glossary of terms. She therefore had to use her own curricular materials that she had from teaching adult newcomers for many years. ELD Teacher 2 also told OCR that when she asked Principal 2 if she could order an ELD curriculum, such as EL Achieve, she was told that the School had already ordered Lexia English and there were insufficient funds to order additional curricula or instructional materials. Dean 1 told OCR that she encouraged ELD Teacher 2 to focus on serving her ELs with "what the School had" rather than worrying about what curriculum to buy.

ELD Teacher 3 explained that Lexia English is a reading program for general education classrooms -- not an ELD curriculum – and it was barely used because general education teachers lacked training on the program and headphones in their classrooms, and the technology (i.e., microphones) did not work well. ELD Teacher 3 told OCR that the only curricular materials she was provided by the School or [redacted content] was a list of topics to cover with newcomers, and that she put together a wish list for next school year that includes a newcomer curriculum, such as National Geographic. Principal 2 told OCR that he is "unsure" whether there are sufficient funds to purchase an ELD curriculum for SY 2024-25.

C. Insufficient Qualified Staff to Implement the School's EL Program and Provide All Identified EL Students with ELD Instruction

As detailed below, OCR found that the School lacked sufficient qualified staff to implement its ELD program and provide all identified EL students with ELD instruction. OCR also found that the School's administrators were not adequately trained to meaningfully evaluate the effectiveness of the ELD teachers in delivering ELD instruction.

[redacted content] requires ELD teachers to hold a valid teacher license or meet alternative requirements in the state in which the teacher is applying and prefers that ELD teachers have a TESOL certification or English as a Second Language endorsement and experience with ELs. [redacted content] also requires that all ELD teachers receive training to administer their state's language proficiency test. The School's [redacted content] contract also requires the School to use the "District's hiring qualifications for teaching staff (ex. Culturally and Linguistically Diverse endorsement from CDE)" and be "responsible for hiring qualified staff to implement ELD programming."

[redacted content] provides training on ELD best practices to new ELD teachers who start at the beginning of the school year; teachers who start later in the school year receive a document with links to asynchronous modules on ELD. [redacted content] also offers optional monthly professional development sessions for ELD teachers, deans, and content teachers on topics such as building lesson plans, using data to lesson plan, and preparing for annual language assessments. In addition, ELD teachers are encouraged to attend monthly "office hours" with the EL Specialist to discuss any concerns and receive reminders.

The School's [redacted content] contract states that the School's ELD program staff "shall attend all District trainings required of the District's ELD program staff." During SY 2023-24, the School's ELD teachers and administrators did not participate in any of the District's professional development opportunities. The District's EL Coordinator told OCR there were not many professional development opportunities specifically for ELD staff during SY 2023-24 because most staff were returning.

The EL Manual states that [redacted content] schools use a Language Instruction Educational Plan (LIEP) to determine how many staff are required to adequately serve the EL students in a school, and the [redacted content] service center calculates a building's ELD staffing needs based on the identified EL students at the school. The Colorado LIEP template provides required services minutes of ELD small group class time based on proficiency levels as determined by scores on the WIDA screener or ACCESS. NEP students are supposed to receive intensive language services 4-5 days per week for 30 to 45 minutes (2-3.75 hours/week). LEP students who have not scored a 4.0 in any area are supposed to receive intermediate language services 2-3 days per week for 30-45 minutes (1-2.25 hours/week). LEP students who have scored a 4.0 or better in at least one area but have not yet been determined proficient in English are supposed to receive transitional language services for 1-2 days per week for 30-45 minutes (.5–1.5 hours/week).

The LIEP for the School, which was provided to OCR, states that the EL student count is 36 students (15 intensive/NEP students and 21 intermediate/LEP students) although the document provides the names of 2 newcomer students, 45 intensive students, 47 intermediate students, 15 transitional students, and 15 monitoring students, for a total of 139 students. The spreadsheets provided to OCR are more consistent with the number of identified students in the LIEP; one spreadsheet lists 86 current ELs (51 NEPs and 35 LEPs) and the other lists 94 current ELs (55 NEPs and 39 LEPs).

Dean 1 told OCR that a few days before the School opened, a classroom teacher was moved to

the ELD Teacher/EL Coordinator position because there were not enough students enrolled to support the number of teachers at her grade level, and no one had applied for the ELD teacher position. That teacher, ELD Teacher 1, has a Colorado teacher license and CLDE endorsement and was a new teacher with no experience teaching ELD or performing the administrative/ compliance tasks required of the EL Coordinator.

ELD Teacher 1 told OCR that she pulled students out for small group ELD instruction, approximately 30 to 40 EL students of the approximately 90 NEPs and LEPs at the School and did not provide any push in support in the general education classroom. ELD Teacher 1 also told OCR that she prioritized providing the [redacted content] required service minutes to the students who scored the lowest on the WIDA screener, which meant that she did not provide any ELD instruction to many of the ELs who qualified for ELD services. The EL Specialist told OCR that she instructed ELD Teacher 1 to focus on serving NEP students because she "obviously can't meet all 60 kids." According to spreadsheets and schedules provided to OCR, EL Teacher 1 provided ELD services to 32-36 ELs.

Several witnesses told OCR that EL Teacher 1 often had to substitute teach for full school days, which meant that her ELs did not receive any ELD instruction on those days or compensatory services. The records provided to OCR indicate that EL Teacher 1 subbed for 13 full school days and 4 partial days during the first semester of SY 2023-24, but several witnesses told OCR that EL Teacher 1 covered Teacher 2's class for three weeks while Teacher 2 was on jury duty, as well as other classes. The EL Specialist told OCR that she informed Principal 2 and Dean 1 of the compliance issues involved in having ELD teachers substitute teach; they responded that they had no other options because of a lack of staff.

ELD Teacher 1 was supervised by Principal 1 until Principal 1 left at the end of September 2023. Dean 1 then became the direct supervisor and evaluator of ELD Teacher 1 and the subsequent ELD teachers. Dean 1 told OCR that she has no credentials in English language acquisition or experience with an ELD program and received no training from [redacted content] regarding ELD services. As a result, Dean 1 could provide only limited support for the ELD program and did not feel comfortable observing the ELD teachers on her own. She therefore asked the EL Specialist or Principal 2 to assist her with the observations of the ELD teachers. Principal 2 also lacks qualifications, training, and experience regarding the teaching of EL students in an ELD program.

On or around November 6, 2023, a second ELD teacher, ELD Teacher 2, began working at the School. ELD Teacher 2 has a Colorado teacher's license, CLDE endorsement, master's degree in CLDE, and a few years of experience teaching K-12 students in bilingual programs. ELD Teacher 2 told OCR that she received no training on ELD from [redacted content] other than how to administer the WIDA screener and ACCESS test and spent the first few weeks of her employment at the School trying to find her students' classroom teachers and students' ELP levels because the information in [redacted content] was incomplete. She also created a schedule and worked to figure out the curriculum.

ELD Teacher 2 began seeing ELs on or around December 4, 2024. She told OCR that she was assigned approximately 40 ELs in the even grades (i.e., kindergarten, second, fourth, and sixth)

but did not have enough hours in the week to schedule her sixth-grade students, which meant they only sporadically received ELD services. There were two to three days when ELD Teacher 2 had to substitute teach for part of the day, which meant that some of her ELs did not receive services.

Both ELD Teachers 1 and 2 left their employment with the School in mid-January 2024. Based on schedules provided to OCR, during the 14 school days that both ELD Teachers 1 and 2 were working with ELs, they together provided ELD services to approximately 58 of the School's NEPs and LEPs. In mid-February 2024, a classroom teacher was moved to the ELD Teacher position. None of the ELs at the School received any ELD instruction between January 19, 2024 and February 12, 2024.

ELD Teacher 3 has a Colorado teacher's license and CLDE endorsement and approximately five years of experience teaching ELD. She told OCR that she did not receive any formal ELD training before she assumed her new position at the School. ELD Teacher 3 also told OCR that, as the only ELD teacher from February 2024 through the end of SY 2023-24, she was unable to provide ELD instruction to all ELs who qualified. She said that she did her best to see as many ELs as possible but was unable to meet the [redacted content] required minutes and could only provide push in support rather than pull out ELD instruction to sixth and seventh graders.

ELD Teacher 3's schedule reflects that she provided ELD services to approximately 90 ELs by pulling out 57 students in kindergarten through fifth grades and pushing in for 23 students in sixth and seventh grades, 9 of which are NEPs. ELD Teacher 3's schedule also reveals that she subbed for three full days and five partial days while an ELD teacher. In addition, she canceled some of her ELD groups on 16 days to administer standardized tests (i.e., Cogat, CMAS, and NWEA) and on 3 days to do administrative tasks related to the ELD program, such as screening, developing Individual Language Plans (ILPs) for next school year, and updating the School's LIEP. No ILPs were created during SY 2023-24.

In addition to the ELD teachers not having the time to serve all identified ELs, some of the ELD teachers intentionally did not pull some ELs for services because the students' teachers said they did not need ELD services. For example, both ELD Teachers 2 and 3 told OCR that they did not serve Students 8 and 9 because their classroom teacher would not allow them to be pulled from class although they both qualified for ELD services. Student 8 scored a 3.5 overall and a 4.0 on literacy on the WIDA screener, and Student 9 scored a 3.0 overall and 3.5 on literacy.

D. Failure to Ensure Parents' Opt-out Decisions are Knowing, Voluntary, and Documented

As detailed below, OCR found that the School removed students from the ELD program without ensuring parents' opt-out decisions were knowing and voluntary by providing information about the students' rights, the range of ELD services the student could receive, and the benefits of those services. In some cases, the students never should have been screened or identified as ELs. OCR also found that the School has not maintained accurate and complete documentation of parent withdrawal decisions, making it difficult for OCR to ascertain how many students have opted out.

The EL Manual has a section on "Parental Opt-out of Services," which provides that parents have the right to refuse ELD services but not testing [redacted content]. The EL Manual provides the steps an EL Coordinator must take when a parent refuses ELD services, which include follow-up communication with the parent by phone or in-person, clear advocacy for ELD services, acceptance of what is ultimately the parent's decision, and documentation of the parent's decision on the Parental Opt-out Waiver form, which should be placed in the student's cum file.

Several School witnesses told OCR that the School's opt-out process is for the ELD teacher or EL Coordinator to send a parent the Parental Opt-out Waiver form when a parent indicates to the classroom teacher that they do not want their child to receive ELD services. There is no meeting with the parent or conversation about the student's ELP or the School's ELD services.

The School provided OCR with signed waiver forms for three students: Students 2, 10, and 11. Student 2 was on the list of students ELD Teacher 2 was supposed to serve when she began at the School in November 2023. ELD Teacher 2 told OCR that when she tried to pull Student 2 for ELD services, she was told by Student 2's classroom teacher, Teacher 1, that Student 2's mom had opted her out of ELD services, but ELD Teacher 2 could not find any documentation to reflect the waiver.

On December 18, 2023, ELD Teacher 2 sent Student 2's mom a notification letter like the one discussed above informing her that Student 2 had been identified for ELD services as a NEP based on her WIDA screener scores with a Parental Opt-out Waiver form. On January 3, 2024, Student 2's mom complained by email to Teacher 1 that she had filled out the waiver form multiple times and does not want Student 2 pulled for ELD services because Student 2 does not speak another language. That day, at the request of Dean 1, ELD Teacher 1 sent another copy of the Parental Opt-Out Waiver form home with Student 2 but did not fill in any of the blanks in the body of the form letter. The form was signed by Student 2's mom on January 4, 2024, and provided to OCR. On January 10, 2024, ELD Teacher 2 checked Student 2's HLQ, which answers English in response to all questions regarding home language and does not identify another language, and raised concerns with Dean 1, Teacher 1, and the [redacted content] Special Populations Specialist about the screening of Student 2. Dean 1 told OCR that the Special Populations Specialist changed the EL designation for Student 2 in [redacted content] so that Student 2 would not have to take the ACCESS test; however, Student 2 continues to be designated as an opt-out EL in [redacted content] but not in IC. Student 2's file in IC is blank with respect to ELD program and opt-out status.

Student 10 is listed in [redacted content] as a NEP student although her kindergarten screener scores were 6 in listening, 4 in speaking, and 4.5 overall proficiency. Dean 1 told OCR that Student 10's mom verbally requested during the first few weeks of SY 2023-24 that Student 10 not be provided ELD services, and Student 10 therefore never received ELD services.

ELD Teacher 2 told OCR that Student 10 was included on the ELD schedule that was provided to her by Dean 1, but that her classroom teacher and mom said the student was opted-out of ELD. ELD Teacher 2 told Dean 1 that she could not find any opt-out paperwork for Student 10 in the School's files. On December 7, 2023, ELD Teacher 1 provided a Parental Opt-Out Waiver

form to Student 10's mom again without filling out the blanks in the body of the form, and Student 10's mom signed the form that day. Student 10 continues to be listed in [redacted content as an opt-out student although she tested proficient on the screener. She is listed as a LEP student in IC with no indication that she is an opt-out student.

Student 11 is listed in [redacted content] as a LEP student who scored an overall proficiency of 3 on the WIDA screener on September 14, 2023. According to a spreadsheet provided to OCR, Student 11 began receiving ELD services from ELD Teacher 1 on November 16, 2023. ELD Teacher 3 told OCR that when she became the School's ELD teacher in February 2024, she was told not to serve Student 11 because his parent had signed the Parental Opt-Out Waiver form earlier in the school year. When ELD Teacher 3 could not find the waiver form, she sent another form to Student 11's parent. The Parental Opt-Out Waiver form for Student 11 that was provided to OCR was signed on April 4, 2024. OCR found another signed Parental Opt-Out Waiver form for Student 11 in the School's paper cum files, which is dated November 16, 2023. Student 11 is not listed in [redacted content] or IC as an opt-out student.

ELD Teacher 2 identified four additional students that were in her assigned grade levels, but she did not pull out for ELD groups because she was told by the students' classroom teachers that they are opt-out students. No opt-out waiver forms were provided or located by OCR for any of these students. One of the students, Student 12 is not on any of the student spreadsheets provided to OCR. He is listed in [redacted content] and IC as a LEP, who is not opted out, although his scores on the WIDA kindergarten screener are proficient (*i.e.*, 6 in listening, 4 in speaking, and 5 in overall proficiency).

Teacher 2 similarly told OCR that Student 13 did not receive ELD services because she was demonstrating grade level on MAP testing and was opted out by her parent. There is a blank Parental Opt-out Waiver form in Student 13's cum file that was not signed by her parents.

E. Concern About ELs' Access to Core Curriculum Through Sheltered English Instruction (SEI)

OCR has a compliance concern based on witness interviews that classroom teachers may not be sheltering or scaffolding instruction to allow ELs to participate fully in the core curriculum.

The EL Manual states that sheltered English instruction (SEI) is a collaborative process between an ELD teacher and classroom teacher and is provided in the classroom to all EL students to increase student success in English language learning through reading, writing, speaking, and listening. The EL Specialist told OCR that SEI should be focused on a targeted domain and in alignment with the EL student's Individualized Learning Plan (ILP).

All the classroom teachers interviewed told OCR that they received no training from [redacted content] on ELD and have not met with the ELD teachers to plan or discuss the language needs of their ELs. Teacher 3 told OCR that she meets the needs of her ELs by providing the same literacy intervention in small groups that all students receive. Teacher 1 told OCR that she has struggled to teach two of her students who speak only Spanish, and that she relies on Google translate. Teacher 3 also told OCR that she sometimes gives her ELs materials in Spanish although one of her ELs does not understand everything she reads in Spanish. Teachers 2 and 3

told OCR that they were not evaluated on how well ELs are accessing the content in their classes. In addition, as discussed above, there were no ILPs created during SY 2023-24.

F. Concern About Lack of Monitoring of Exited ELs

OCR has a compliance concern based on witness interviews and student records that exited ELs were not monitored by the School during SY 2023-24. Several witnesses told OCR that the School did not obtain the educational records of most students from their prior schools, including students who previously attended schools in the District; the School focused only on obtaining records for students with IEPs. As a result, the School had no information about which of its students had exited an ELD program in the last four years and were in need of monitoring.

Without such information, the School screened students based solely on responses on the HLQ, as discussed above. If a student scored not proficient on the screener, the student was placed in the ELD program regardless of whether the student had recently exited an ELD program. For example, Student 14 was identified by the District as LEP in 2018 and received ELD services through June 2022. During SY 2022-23, Student 14 was moved to Fluent English Proficient (FEP) Monitoring Year 1 (M1), because he scored proficient on ACCESS in January 2022. Although Student 14 entered the School as a FEP M2 student during SY 2023-24, the School screened him on September 12, 2023, and found him eligible for ELD services as LEP.

Similarly, Student 15, whose records from another school district were ultimately obtained presumably because she has an IEP, scored proficient on ACCESS in January 2023 and should have been a FEP M1 during SY 2023-24 but was screened by the School on September 13, 2023, and determined not proficient in English.

OCR was unable to ascertain how many other ELs entered the School as FEPs because it only had access through IC to the records of students who came from a District school, which is a small percentage of the students at the School (approximately 6.5%). Teacher 1 told OCR about Student 16, who told her she had tested out of ELD services last school year but was not listed in any of the School's or District's records as a FEP student and was never screened despite identification of another language in the home. The District's EL Coordinator told OCR that, at the end of SY 2023-24, there were nine of the School's ELs who were flagged by CDE for reporting errors; four of the nine students were flagged because they should have been coded as FEPs but were not because of the School's lack of access to prior reporting history.

Student 17 is the only student identified by the School as FEP. Student 17 scored proficient on the WIDA screener (although the spreadsheets provided to OCR list him as not proficient) and was labeled as FEP M1 instead of as a PHLOTE. OCR is unclear how the School determined that Student 17 is FEP since he did not attend school in the District previously. Further, ELD teachers told OCR that monitoring did not happen during SY 2023-24.

G. Concern About Communication with Limited English Proficient Parents

OCR has a compliance concern that some teachers may lack knowledge and understanding regarding who the parents with LEP are and about the need to communicate with limited English proficient (LEP) parents in a language they understand. The HLQ asks in what language parents

prefer school notices and letters, and [redacted content] includes a field for home communication language on the Student Demographics page. Information about parents' language proficiency is also supposed to be included in students' ILPs. According to the spreadsheets provided to OCR, there are at least 13 students in the School whose parents indicated that they prefer communication in Spanish.

The EL Manual states that multilingual staff may provide interpretation services to parents provided schools ensure the employee is proficient in the language requested. Professional interpretation services are also available through a Language Line and document translation is available by contacting the Special Populations Specialist.

Teacher 3 told OCR that she does not know which of her students' parents prefer communication in a language other than English and does not know what to do if a parent needs oral interpretation. She was able to identify at least one parent who prefers to communicate in Spanish, however, Teacher 3 was unable to explain how to access the School's interpretation services. Teacher 2 also explained to OCR that while the information regarding the parent's preferred language is available to staff who know to seek it, the staff never received a directive about communicating with parents with LEP. Additionally, when OCR inquired how teachers are made aware of which parents have LEP, the EL Specialist was unable to explain how a teacher would know if the student does not have an ILP (e.g., non-EL student who has a parent with LEP).

H. Concern About Incomplete and Inconsistent School and District EL Student Records

OCR has a compliance concern regarding the School's record-keeping for EL students. ELD Teacher 2 told OCR that ELs' data was not entered into [redacted content] until December 2023, making it hard for her to find her students' proficiency levels when she started working at the School. Teacher 2 similarly told OCR that she was not informed of her EL students' proficiency levels, and only learned that they were ELs when an ELD teacher came to pull them out for ELD small groups.

Around the same time, the District discovered that it had to order ACCESS tests for the School because CDE did not have access to the School's EL student data because it had not been entered into IC. On or around December 15, 2023, an [redacted content] employee started entering some limited EL data student data into IC (i.e., ELD program status, home language, and ACCESS scores) – but not parent notification or opt-out status. The District's EL Coordinator told OCR that she had to fix some of the School's data in IC because it was inaccurate and/or incomplete.

OCR discovered many issues and discrepancies with the School's EL student data in [redacted content], IC, the spreadsheets provided to OCR, and students' cum files, which impeded OCR's investigation. For example:

- Some students do not appear to have a cum file although they were screened as a PHLOTE;

- Some students' cum files are missing WIDA screener and/or ACCESS score reports;
- Only a few parent notification letters are in students' cum files;
- One student has a signed Parent Opt-out Waiver form in his cum file but no indication in [redacted content] or IC that he is an opt-out student;
- There are some students with January 2024 ACCESS scores who are not listed as ELs in [reacted content] or IC;
- There are some students listed as receiving ELD services who appear never to have been screened or identified as an EL;
- Many students are listed as ELs in [redacted content] but not in IC;
- Several students' WIDA screener scores were entered incorrectly in [redacted content];
- Some students are listed as NEP in [redacted content] whose WIDA screener scores put them in the LEP range;
- There are ACCESS scores for a student not listed on any of the spreadsheets provided to OCR;
- ELs are listed as having an ELD services start date of 8/9/23 in IC although none of the School's students received ELD services before 9/5/23;
- The two spreadsheets provided to OCR do not include some of the ELs referenced in other documents provided to OCR and have inconsistent student information; and
- The spreadsheet identifying ELs' ELD teacher is inconsistent with the ELD teachers' schedules provided to OCR.

While these gaps in the records were not so significant as to prevent OCR from making determinations about the District's and School's compliance with Title VI based on available records and other sources of evidence, like witness interviews, OCR is concerned that the District's and School's records for ELs do not meet their recordkeeping obligations under Title VI. Resolving the above-mentioned non-compliance findings and concerns will require that the District and School create and maintain timely, accurate, and complete records for all ELs, including those who have been withdrawn by their parents from the ELD program or reclassified.

V. CONCLUSION

Upon being advised of OCR's non-compliance findings and compliance concerns, the District and School entered into an Agreement to resolve the matters. A signed copy of the Agreement is attached with this letter. When the Agreement is fully implemented, the issues will be resolved consistent with the requirements of Title VI and its implementing regulations. OCR will monitor implementation of this Agreement through periodic reports from the District and School about the status of the Agreement terms. When fully implemented, the Agreement will address OCR's identified areas of non-compliance and concern. OCR will monitor the implementation of the Agreement until the District and School are in compliance with its terms and the statutory and regulatory obligations under Title VI that were at issue in the case. The Complainant will receive a copy of OCR's monitoring letters.

This case is now in the monitoring phase. The monitoring of this case will be completed when

OCR determines that the District and School have fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District and School stating that this case is closed.

This concludes OCR's investigation in this case and should not be interpreted to address the District's or School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determinations in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. Please be advised that the District and School must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information, which, if released, could constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation extended to OCR during the investigation and resolution of this case. If you have any questions, please contact the attorneys assigned to this case: Jennifer Weiser Bezoza at [redacted content]; or Colleen Brooks at [redacted content].

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Attachment: Resolution Agreement

cc: Ben Hase, Counsel for School (by email)
Melissa Barber, Counsel for District (by email)
Susana Cordova, Colorado Commissioner of Education (by email)